



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON DEPARTMENT OF HAWAIIAN HOMELANDS REQUEST FOR WAIVER TO FILE AS AN ELIGIBLE ENTITY IN THE 2.5 GHZ RURAL TRIBAL PRIORITY WINDOW

WT Docket No. 20-21

Comment Date: February 10, 2020

Reply Comment Date: February 20, 2020

By this *Public Notice*, we seek comment on a request for waiver filed by the Department of Hawaiian Home Lands (DHHL) to consider the DHHL an eligible entity for the purpose of applying for wireless spectrum licenses in the upcoming 2.5 GHz Rural Tribal Priority Window.¹

The 2.5 GHz Rural Tribal Priority Window (Window) was established by the Commission in a July 2019 *Report & Order*; the Window provides an opportunity for federally-recognized Native American Tribes, and certain other eligible entities, to obtain licenses for unassigned spectrum in the 2.5 GHz band over their eligible Tribal lands, subject to certain limitations.² The rules adopted in the *Report & Order* define eligible Tribal lands as, among other things, “any federally recognized Indian Tribe’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see § 54.400(e) of this chapter, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the State of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, et seq., as amended. . .”³ The same rules define eligible entities as “federally recognized American Indian Tribe[s] or Alaska Native Village[s]; or an entity that is owned and controlled by a federally-recognized Tribe or a consortium of federally-recognized Tribes.”⁴ The Bureau of Indian Affairs maintains a list of federally-recognized Tribal entities; the most recent version of this list was published in the Federal Register on February 1, 2019, and contains no Tribal entities located in Hawaii.⁵

The DHHL argues that the Commission’s definition of eligible entities excludes native Hawaiians, and therefore leaves native Hawaiians with no path to obtaining the wireless spectrum

¹ See Request for Waiver of the 2.5 GHz Report & Order Tribal Priority Window Entity Eligibility Rules (dated Jan. 14, 2020) (*Waiver Request*).

² *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5447, 5463-69, paras. 47-65 (2019) (*Report & Order*).

³ See 47 CFR § 27.1204(b)(2).

⁴ See 47 CFR § 27.1204(b)(1).

⁵ See Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 84 FR 1200 (2019).

licenses offered in the Rural Tribal Priority Window.⁶ The DHHL notes the Commission's explicit inclusion of Hawaiian Home Lands in the definition of eligible areas, and it argues that the omission of native Hawaiians from the list of eligible entities therefore produces a result that is contrary to the Commission's stated purpose of "provid[ing] Tribal Nations with an opportunity to obtain unassigned [2.5 GHz] spectrum to address the communications needs of their communities."⁷ The DHHL further argues that it is the appropriate entity to represent native Hawaiians in obtaining and managing this spectrum, because of its designation by the State of Hawaii as the entity responsible for managing Hawaiian Home Lands, including trust resources,⁸ and because of its capabilities and operational history with regard to "managing and licensing utilities for expansion and service to rural Homestead communities."⁹ DHHL provides a Memorandum of Understanding signed by the Office of Hawaiian Affairs, and the Department of Business, Economic Development, and Tourism and itself in which all three agencies agree DHHL is the appropriate applicant.¹⁰

We note that a grant of this waiver request would not automatically award the DHHL any wireless spectrum license, nor would it guarantee the result of any application for any licenses that the DHHL may file in the future. A grant of the waiver would merely specify that the DHHL qualifies as an eligible entity under the Commission's rules for the purposes of the Rural Tribal Priority Window.¹¹ Any application filed by the DHHL pursuant to this waiver would be required to meet all relevant criteria under the Commission's rules.¹²

We seek comment on this waiver request.

Procedural Matters

Interested parties may file comments and reply comments in response to the waiver request on or before the dates listed on the first page of this *Public Notice*. All pleadings must reference the docket number appearing on the first page of this *Public Notice*. Parties may file comments using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.¹³

- **Electronic Filers:** File comments electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding,

⁶ See *Waiver Request* at 2.

⁷ See *Waiver Request* at 5-6, quoting *Report & Order*, 34 FCC Rcd at 5463, para. 47.

⁸ See *Waiver Request* at 7.

⁹ See *Waiver Request* at 3.

¹⁰ See *Waiver Request* at Exhibit 1.

¹¹ Specifically, the requirements of 47 CFR § 27.1204(b)(1) would be waived with respect to the DHHL. All other provisions of § 27.1204 would remain in effect.

¹² See 47 CFR § 27.1204.

¹³ See *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11322 (1998).

filers must submit two additional copies for each additional docket or rulemaking number.

Send filings by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Address filings to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Deliver hand-delivered or messenger-delivered paper filings to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554 between 8:00 AM and 7:00 PM. Use rubber bands or fasteners to hold deliveries together. Dispose of all envelopes before entering the building.
- Send commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Send U.S. Postal Service first-class, Express, and Priority mail to 445 12th St., SW, Washington DC 20554.

The request, and comments and reply comments filed in response to this *Public Notice* are available for viewing via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number appearing on the first page of this *Public Notice*. The documents also will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. Reference Information Center business hours are available at <https://www.fcc.gov/general/fcc-reference-information-center>.

Alternate formats of this *Public Notice* (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY), or send an e-mail to fcc504@fcc.gov.

This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, contact Catherine Schroeder of the Wireless Telecommunications Bureau, Broadband Division, at (202) 418-1956, Catherine.Schroeder@fcc.gov.

Action by the Chief, Broadband Division, Wireless Telecommunications Bureau.

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¹⁴ See 47 CFR §§ 1.1200(a), 1.1206.